

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SCOTT SHIRLAND

Claimant

VS.

ELITE PROFESSIONALS, INC.

Respondent

Uninsured

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Docket No. 217,798

ORDER

Claimant requested Appeals Board review of the May 13, 1997, preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Claimant raised the following issues:

- (1) Whether claimant's injury was contributed to by his consumption of alcohol.
- (2) Whether claimant gave respondent timely notice of accident.
- (3) Whether claimant is entitled to temporary total disability benefits.
- (4) Whether claimant is entitled to authorized medical treatment for his injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The intoxication and notice issues raised by the claimant are issues listed in K.S.A. 44-534a, as amended, that grant the Appeals Board jurisdiction to review a preliminary hearing order.

(1) This is the second of two preliminary hearings held in this case. The first preliminary hearing was held on January 29, 1997, and resulted in a February 4, 1997, Order requiring respondent to pay past medical expenses and to provide ongoing medical treatment for an injury claimant received to his right wrist on July 14, 1996. Claimant was employed by the respondent as an over-the-road truck driver and lacerated his right wrist when he put it through a heavy glass lobby door in a motel in Russellville, Arkansas, where he was staying overnight.

Following the February 4, 1997, Order, respondent took the evidentiary deposition of Richard Patel, general manager of the Ramada Inn Limited in Russellville, Arkansas, where claimant lacerated his right wrist. The respondent also took the deposition of Alfonso Rios, who was the respondent's dispatcher on the date of claimant's accident. Thereafter, the respondent filed an Application for Preliminary Hearing requesting the Administrative Law Judge to terminate his previous preliminary hearing Order that authorized medical treatment for claimant's injury. Respondent argued that it was not responsible for claimant's injury because claimant's intoxication contributed to the injury and further claimant had failed to give timely notice of accident to the respondent.

On the other hand, claimant filed an Application for Preliminary Hearing arguing that claimant was entitled to temporary total disability benefits because his injured wrist required surgery and the surgery resulted in claimant being temporarily and totally disabled from February 7, 1997, through April 11, 1997. Claimant supported the claim for temporary total disability benefits by entering into evidence medical reports of Charles Carroll, IV, M.D., who performed surgery on claimant's injured right wrist on March 11, 1997. Dr. Carroll's medical records indicated claimant was taken off work on February 7, 1997, and released for light work on April 11, 1997.

In the preliminary hearing Order that is the subject of this appeal, the Administrative Law Judge found that claimant was intoxicated at the time of his July 14, 1996, accident and such intoxication contributed to claimant's injury. Thus, pursuant to K.S.A. 1996 Supp. 44-501(d)(2), the Administrative Law Judge found respondent had no liability for claimant's injury. Claimant was, therefore, denied his request for temporary total disability benefits and the medical treatment the Administrative Law Judge ordered for claimant's right wrist injury in the previous preliminary hearing Order was terminated.

The Appeals Board agrees with the conclusion of the Administrative Law Judge and finds that the preliminary hearing record, as a whole, contains persuasive evidence that supports the finding that claimant's right wrist injury was contributed to by claimant's intoxication. Following claimant's injury, he was rendered first aid at the motel and was transported to the hospital by the emergency medical service. The emergency medical

service record was admitted at the preliminary hearing and indicated that the claimant was heavily intoxicated to the point he was unable to support his own airway and head. Claimant received treatment for his injury at the St. Mary's Regional Medical Center Emergency Department in Russellville, Arkansas. This medical treatment record was also admitted into evidence at the preliminary hearing. The record indicates that when the claimant arrived at the medical center he was semiconscious and had a smell of alcohol on his body. Mr. Patel, the motel manager, testified that he was on duty at the front desk in the early morning of July 14 when the claimant put his hand through the glass door. Mr. Patel saw claimant staggering as he was returning to the motel from a nearby night club. Mr. Patel testified that claimant shook the locked lobby doors and when he found the doors locked, he raised his right fist to head height and struck the heavy glass of the door with such force the glass broke. It was Mr. Patel's opinion that claimant was heavily intoxicated and the reason he was upset and intentionally struck the heavy glass doors was the result of his intoxication.

(2)(3)(4) The Appeals Board finds the remaining issues need not be addressed because they are rendered moot by the above finding.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated May 13, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 1997.

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
James C. Wright, Topeka, KS
Jeffrey Larson, Emporia, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director